

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 24.26.508) ON PROPOSED AMENDMENT
and the proposed repeal of) AND REPEAL
ARM 24.26.513 related to the)
consolidation of wage and)
classification appeals)

TO: All Concerned Persons

1. On March 3, 2006, at 1:30 p.m. the Department of Labor and Industry will hold a public hearing in the first floor conference room, Room 104, Walt Sullivan Building, 1327 Lockey, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 27, 2006, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Labor Standards Bureau, Attn: John Andrew, P.O. Box 6518, Helena, Montana 59604-6518; telephone (406) 444-4619; fax (406) 444-7071; TDD (406) 444-5549; or email joandrew@mt.gov.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.26.508 GRIEVANCE PROCEDURE (1) Any employee, group of employees ~~not represented by a labor organization, or an~~ appropriately designated representatives, may utilize this formal grievance procedure. ~~The individual employee~~ Employees must obtain a state employee classification and wage appeal form and follow the accompanying instructions. ~~In the case of a potential group appeal, the group of employees must comply with the rules governing consolidated appeals (ARM 24.26.513).~~ Appeal forms may be obtained from the Board of Personnel Appeals, ~~P.O. Box 1728, Helena, MT 59624-1728,~~ P.O. Box 6518, Helena, Montana, 59604-6518, or from the personnel office of any department within the executive branch, or from the department's website at:
erd.dli.mt.gov/laborstandard/wagehrbpa.asp.

(a) and (b) remain the same.

(c) If a number of appeals affect multiple employees in the same manner, the appeals may be consolidated at any step of the grievance process by the employees, by an appropriately designated representative, by the department, by the state Personnel Division, or by the Board of Personnel Appeals. If the appeals are consolidated, the timelines in this rule will run from the dates associated with the

latest appeal included in the consolidation. If an employee who is not represented by a labor organization opposes consolidation, that employee's appeal will not be consolidated absent a board order. However, an employee represented by a labor organization may not contradict the employee's appropriately designated representative and either consolidate an appeal or opt out of a consolidated appeal unless by board order. Consolidation of appeals will be by written stipulation of the parties or by board order. A consolidation may be altered or amended at any time before the final order of the board. If an employee opposes altering or amending the consolidation, the employee may request a hearing to be held before the final order of the board is issued.

(c) remains the same, but is renumbered (d).

(2) through (4) remain the same.

AUTH: 2-4-201, 2-18-1011, 39-31-104, 39-32-103, MCA

IMP: 2-4-201, 2-18-1011, 39-31-104, 39-32-103, MCA

REASON: There is reasonable necessity to amend ARM 24.26.513, governing the consolidation of wage and classification appeals, because the Board has determined the rule has caused significant confusion for employees wishing to consolidate their appeals. Specifically, when a designated labor representative of the employees requests consolidation from the Board of Personnel Appeals and consolidation is granted, the representative and employees are assuming the grievance procedure has begun. In fact the grievance procedure does not begin until the consolidated appeals are then filed with the relevant agency as provided by ARM 24.26.508.

In order to address this confusion and provide a clearer process, it is reasonably necessary to repeal the rule governing consolidations and amend the rule governing the grievance procedures. Regarding the rule governing the grievance process, it is reasonably necessary to allow employees, appropriately designated representatives, the relevant department, the state personnel division, and the Board of Personnel Appeals to consolidate similar appeals at any time in the process because similar appeals are discovered at each step of the process. However, it is also reasonably necessary to allow an employee who does not wish their appeal to be consolidated to opt out of consolidation if that employee is not bound by a labor agreement. It is also reasonably necessary to specify that employees represented by a labor organization may not consolidate appeals or opt out of a consolidation unless approved by the Board because those employees are bound by bargaining agreements. The proposed rule makes clear that in each instance, the Board has the final authority on approving the make-up of a consolidated appeal.

Regarding the timelines, subsection (4)(h) of this rule allows the parties to waive any of the timelines upon mutual agreement. It is the experience of staff for the Board that parties usually agree to waive the timelines. However, in the event the parties do not come to an agreement, it is reasonably necessary to indicate that the timelines will run from the dates associated with the latest filed appeal included in the consolidated appeal.

It is also reasonably necessary to ensure a consolidation is recorded in writing to memorialize it for reference. It is also reasonably necessary to allow an employee to request a hearing if that employee opposes altering or amending a consolidation before the final order of the Board is handed down. It is reasonably necessary to delete the references in the rule to ARM 24.26.513, to correct the Board's mailing address in the rule, and to add the Board's website address for internet users.

Finally, there is reasonable necessity to amend the AUTH and IMP cites to more accurately reflect the Board's statutory authority for the adoption of procedural rules.

4. The rule proposed for repeal is as follows:

24.26.513 CONSOLIDATED APPEALS found at ARM page 24-1707.

AUTH: 2-18-1011, MCA

IMP: 2-18-1011, MCA

REASON: It is reasonably necessary to repeal this rule to eliminate procedural confusion in the limited number of cases in which it is invoked.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

John Andrew, Bureau Chief
Labor Standards Bureau
Employment Relations Division
Department of Labor and Industry
PO Box 6518
Helena, Montana 59604-6518

and must be received by no later than 5:00 p.m., March 10, 2006. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's website at <http://dli.state.mt.us/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://dli.state.mt.us/forum.asp>, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., March 10, 2006. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to

system maintenance or technical problems, and that a person's difficulties in accessing or posting to the comment forum do not excuse late submission of comments.

7. The Department maintains lists of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the mailing lists shall make a written request which includes the name and mailing address of the person to receive notices and any specific topic or topics over which the Department has rulemaking authority. Such written requests may be delivered to Mark Cadwallader, 1327 Lockett St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The Hearings Bureau of the Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

BOARD OF PERSONNEL APPEALS,
Jack Holstrom, presiding officer

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 30, 2006